



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-832

CERTAIN INK APPLICATION DEVICES AND COMPONENTS THEREOF AND METHODS OF USING THE SAME

DETERMINATION TO REVIEW IN PART AN INITIAL DETERMINATION FINDING ALL RESPONDENTS IN DEFAULT; REQUEST FOR SUBMISSIONS ON REMEDY, PUBLIC INTEREST, AND BONDING AS TO CERTAIN RESPONDENTS

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 7) finding respondents T-Tech Tattoo Device Inc. of Ontario, Canada ("T-Tech"); Yiwu Beyond Tattoo Equipments Co., Ltd. of Yiwu City, China ("Yiwu"); and Guangzhou Pengcheng Cosmetology Firm of Guangzhou, China ("Guangzhou") in default.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can

be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 6, 2012, based on a complaint filed by MT.Derm GmbH of Berlin, Germany and Nouveau Cosmetique USA Inc. of Orlando, Florida (collectively "Complainants") alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink application devices and components thereof and methods of using the same by reason of infringement of certain claims of U.S. Patent Nos. 6,345,553 and 6,505,530. *77 Fed. Reg.* 13351 (Mar. 6, 2012). The Commission's Notice of Investigation ("NOI") named T-Tech, Yiwu, and Guangzhou as respondents. The Complaint was served on March 1, 2012. The Office of Unfair Import Investigations was named as a party.

On April 16, 2012, Complainants filed a motion seeking a determination that respondents T-Tech, Yiwu, and Guangzhou be found in default based on their failure to respond to the Complaint and Notice of Investigation. On April 17, 2012, the Commission investigative attorney ("IA") filed a response in support of the motion. On May 1, 2012, the ALJ issued Order No. 5, ordering the respondents to show cause by close of business on May 16, 2012, why they should not be found in default. No responses were received.

On May 31, 2012, the ALJ issued the subject ID, granting the motion for default pursuant to section 210.16(a)(1) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.16(a)(1)). On June 6, 2012, T-Tech submitted correspondence to the Commission stating that it had not received any prior communication from the Commission and arguing that the ID finding it in default should be reviewed. On June 7, 2012, the IA filed a Request for Extension of Time for Filing a Petition for Review of Order No. 7. The Chairman granted the motion on June

8, 2012. On June 13, 2012, the IA filed a petition for review of Order No. 7 as to the finding of default against T-Tech. In its petition, the IA notes that the FedEx shipping log indicates that the shipment containing the Complaint and NOI was incorrectly addressed and that it was redirected to another address, but was not received. The IA further notes that the FedEx shipping log indicates that on March 14, 2012, the shipment was intended to be returned to the Commission as undelivered, but that it was not returned, nor did FedEx notify the Commission of the delivery failure. On June 19, 2012, Complainants filed a response to the IA's petition.

Having examined the record of this investigation, including the subject ID, T-Tech's correspondence, the petition for review, and the response thereto, the Commission has determined to review the subject ID in part, and, on review, to reverse the finding of default against T-Tech.

The Commission has determined not to review the subject ID findings that Yiwu and Guangzhou are in default. Pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and section 210.16(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.16(c)), the Commission presumes the facts alleged in the complaint to be true with respect to Yiwu and Guangzhou.

In connection with the final disposition of this investigation as to Yiwu and Guangzhou, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities

involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Commission Opinion at 7-10) (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no

later than close of business on July 13, 2012. Reply submissions must be filed no later than the close of business on July 20, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-832") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

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